

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

REGINALD WHEELER, ) NO. CV 12-5767-GHK(E)  
 )  
Petitioner, )  
 )  
v. ) ORDER OF DISMISSAL  
 )  
ROBERT TRIMBLE, Warden, )  
 )  
Respondent. )  
 )  
 )

On July 3, 2012, Petitioner filed a "Petition for Writ of Habeas Corpus By a Person in State Custody" ("the Petition"). The Petition challenges Petitioner's 1985 Los Angeles Superior Court conviction and/or sentence (Petition at 2). Petitioner previously challenged this same conviction and/or sentence in a habeas petition filed in this Court in 1998. See Wheeler v. Carey, CV 98-2304-WJR(E) ("the prior habeas action"). On September 30, 1998, the Magistrate Judge issued a report and recommendation in the prior habeas action, recommending denial and dismissal of the petition with prejudice as untimely. On October 26, 1998, the District Judge filed an order adopting the report and recommendation in the prior habeas action.

1 On October 29, 1998, the Court entered Judgment in the prior habeas  
2 action, denying and dismissing the petition with prejudice.  
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4 The Court must dismiss the present Petition in accordance with  
5 28 U.S.C. section 2244(b) (as amended by the "Antiterrorism and  
6 Effective Death Penalty Act of 1996"). Section 2244(b) requires that  
7 a petitioner seeking to file a "second or successive" habeas petition  
8 first obtain authorization from the court of appeals. See Burton v.  
9 Stewart, 549 U.S. 147, 157 (2007) (where petitioner did not receive  
10 authorization from Court of Appeal before filing second or successive  
11 petition, "the District Court was without jurisdiction to entertain  
12 [the petition]"); Barapind v. Reno, 225 F.3d 1100, 1111 (9th Cir.  
13 2000) ("the prior-appellate-review mechanism set forth in § 2244(b)  
14 requires the permission of the court of appeals before 'a second or  
15 successive habeas application under § 2254' may be commenced"); Miles  
16 v. Mendoza-Powers, 2007 WL 4523987, at \*2-3 (E.D. Cal. Dec. 19, 2007)  
17 (subsequent petition alleging different claims but challenging the  
18 same judgment challenged in a prior habeas petition is "second or  
19 successive"). The dismissal of a habeas petition as barred by the  
20 statute of limitations "constitutes an adjudication on the merits that  
21 renders future petitions under § 2254 challenging the same conviction  
22 'second or successive' petitions under § 2244(b)." McNabb v. Yates,  
23 576 F.3d 1028, 1030 (9th Cir. 2009). Petitioner evidently has not yet  
24 obtained authorization from the Ninth Circuit Court of Appeals.

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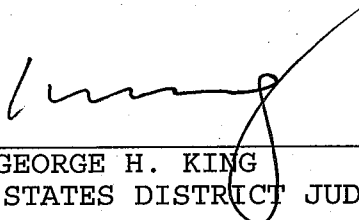
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1 Consequently, this Court cannot entertain the present Petition. See  
2 Burton v. Stewart, 549 U.S. at 157.

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4 For all of the foregoing reasons, the Petition is denied and  
5 dismissed without prejudice.

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7 LET JUDGMENT BE ENTERED ACCORDINGLY.

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9 DATED: 7/25, 2012.

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12 \_\_\_\_\_  
13 GEORGE H. KING  
14 UNITED STATES DISTRICT JUDGE

15  
16 PRESENTED this 18<sup>th</sup> day of  
17 July, 2012, by:

18   
19 \_\_\_\_\_  
20 CHARLES F. EICK  
21 UNITED STATES MAGISTRATE JUDGE